IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8691 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ARVINDABEN R SHAH - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR CS UPADHYAY for Petitioner(s) : 1,
RULE SERVED for Respondent(s) : 1, 3,
MR RJ OZA for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 08/02/2006

ORAL JUDGMENT

1. The petition is filed under Article 226 of the Constitution of India praying for declaration that

the petitioner was eligible for promotion on the post of Research Assistant on or before 1.1.73, i.e. the date when the respondent no.3, was promoted on the post of Research Assistant. The petitioner has also prayed for direction to respondent to consider the petitioner as promoted on the post of Research Assistant on 1.1.1973 and thereafter, to give all consequential benefits i.e. salary, difference of salary, promotion seniority etc. as if the petitioner was promoted before respondent no.3 on the post of Research Assistant. The petitioner has also prayed for the direction to respondent authorities to include the petitioner's name in the seniority list of Research Assistant and seniority of officer before the respondent no.3 and to give all consequential benefits i.e. salary, difference of salary, promotion, seniority etc. as if the petitioner was promoted before the respondent no.3 on the post of Research Officer.

2. The petition was admitted and rule was issued on 28.02.1990. However interim relief was refused. The Court has granted permission to delete the prayers

contained in Para 22(A) and (B). The only question remains in the present petition is as to whether the petitioner is entitled to be listed in the seniority list of Research Assistant and Research Officer before the respondent no.3.

3. It is the case of the petitioner that the petitioner was eligible for promotion on the post of Research Assistant. It is also the case of the petitioner that from the post of Statistical Assistant, promotion lies to the post of Research Assistant. The State Government had framed Recruitment Rules for promotion on the post of Research Assistant under Article 309 of the Constitution. Rule 2 of the Research Assistant (Bureau of Economics and Statistics) Recruitment Rules 1976, is as under:-

"Appointment to the post of Research Assistant in the directorate of Bureau of Economics and Statistics shall be made:"

(i)by promotion of a person of proved merit and efficiency from amongst the Statistical

Assistants and Inspectors who have passed the departmental examination and who possess at least three years experience as Statistical Assistant and/or Inspectors, or

(ii) by direct selection”

4. It is further stated that the respondent authorities passed orders giving promotions to the persons Juniors to the petitioner on the post of Research Assistant. In the seniority list published by the respondent authorities for Statistical Assistants on 5.3.1971 the name of petitioner was shown at Sr.No.170. The name of respondent no.3 was shown at Sr.No.173. The name of Shri A.G.Avasiya was shown at Sr.No.180. The name of Shri R.D.Dave was show at Sr.No.181. It is stated that Shri I.C.Shah was further promoted on the post of Research Officer, Class-II vide notification dated 7.5.1983. It is further stated that final seniority list of the post of Research Assistant was published vide circular dated 16.6.1986 in which the name of the petitioner was shown at Sr.No.229 and the name of the respondent no.3 Shri I.C.Shah

was shown at Sr.No.209. The petitioner has also made representation. It is stated that the petitioner was promoted to the post of Research Assistant on 28.10.1974 though petitioner was at Sr.No.170 in the list of Statistical Assistant whereas the respondent no.3 was promoted to the post of Research Assistant on 1.1.1973 though his name was at Sr.No.173. It is further submitted that petitioner was promoted to the post of Research Assistant, Class-II on 19.01.1985 whereas the respondent no.3 was promoted to the post of Research Officer Class-II on 07.05.1983. It is further submitted that there was no justification on the part of the respondent authorities to place the petitioner's name after respondent no.3.

5. The affidavit-in-reply is filed by the respondent no.2 i.e. Deputy Director of Bureau of Economics and Statistics, Government of Gujarat, Sector 18, Gandhinagar wherein it is stated that the petitioner was not promoted to the post of Research Assistant though she was senior to Shri I.C.Shah

only because she was not considered suitable for promotion on the ground of merit and efficiency. As per Committee Report dated 18.08.1972, “She can not be considered for promotion at present, however, her work should be watched for further one year, before she can be promoted.” Not only that after promotion in the year 1974, petitioner's confidential remark for the period 1.1.1974 to 28.10.1974 was also not found satisfactory and representation made by her on 19.02.1976, was not found acceptable. It was therefore, contended that respondents have acted in accordance with law and, no right much less any fundamental right of the petitioner was violated.

6. After having gone through the memo of petition and other papers, it is found that petition was earlier dismissed for default by order of this Court dated 28.04.2000. The petition was restored by order dated 17.06.2004 passed in M.C.A.No.2304 of 2003. The petitioner joined in service in the year 1964. More than 40 years have passed. Petitioner might not be in the employment. Today

when the matter is called out neither petitioner nor her advocate is present. The petition would have been disposed of for want of prosecution. However one more application for restoration may be filed and matter gets further delayed. The court has therefore, recorded the pleadings of the parties, and is of the view that the petitioner is not entitled to the relief claimed in this petition since the petitioner was not found suitable for promotion, at the time when her junior was promoted.

7. In the above view of the matter, the petition is dismissed. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

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